# Tan Hock Khoon v Phua Siew Lang (P) & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J–02–485 OF 1997
GOPAL SRI RAM, AHMAD FAIRUZ AND MOKHTAR SIDIN JJCA
23 JUNE 2006

*Succession — Administration — Sale of land — Consent of court — Objection by beneficiaries — Estate had remained without being administered for 45 years — Whether consent of all or majority of beneficiaries must first be obtained*

The plaintiff as administrator de bonis non of the estate of Phua Si Toh ('the deceased') entered into a conditional agreement to sell a piece of land forming part of the deceased's estate. The purchase price was RM1m. Thereafter, the plaintiff applied to the High Court for consent to effect the sale. His application was opposed by the defendants, all beneficiaries of the deceased's estate. The judge who heard the matter dismissed it on the ground that the sale was not in the interest of the beneficiaries as the purchase price was not reasonable in view of the valuation reports produced and relied upon by the defendants. Learned counsel for the appellant criticised the approach of the learned judge as being indifferent to the special and particular facts of this case. As at the date on which the plaintiff took out his summons for consent on 20 June 1996, the deceased's estate had remained without being administered for about 45 years. At the hearing before the judge several of the defendants produced a valuation report showing the land to be RM1.9m; however there was no evidence of a genuine buyer produced at the hearing of the summons or any earlier.

**Held**, allowing the appeal:

(1) Although there was a mention made by the learned judge in his judgment of a statement by counsel for the remaining defendants that the 15th defendant was agreeable to purchase the subject land for RM1.3m, it was significant that no evidence of means was put in to show a real ability on his part to produce the purchase price. Against all this, the judge had before him a purchaser who was ready, willing and able to complete the purchase at RM1m without vacant possession. If the sale is not put through, there is no saying how many more years this estate will remain without being wound up. There was therefore merit in the complaint of learned counsel that the learned judge failed to take into account relevant considerations when exercising his discretion against the plaintiff (see para 3).

(2) Whilst the court may have regard to the interests of the beneficiaries there is no requirement in law that a sale of the property of a deceased's estate must have the consent of all or even a majority of the beneficiaries (see para 9);

*Che Ah and Che Yang Kelsom v Che Ahmad* [1941] MLJ 126 and *Yap Yoke Luan v Ong Wee Tok* [1984] 1 MLJ 23 distinguished.

**[Bahasa Malaysia summary**

Plaintif sebagai seorang pentadbir de bonis non harta pusaka Phua Si Toh ('si mati') telah memasuki satu perjanjian bersyarat untuk menjual sebidang tanah yang merupakan sebahagian daripada harta pusaka si mati. Harga jualan adalah RM 1 juta. Oleh yang demikian, plaintif telah memohon kepada Mahkamah Tinggi untuk kebenaran membuat jualan tersebut. Permohonannya telah dibantahi oleh defendan-defendan, kesemua benefisiari-benefisiari harta pusaka si mati. Hakim yang mendengar perkara ini menolak permohonan tersebut atas alasan yang jualan tersebut tidak memberi kepentingan kepada benefisiari-benefisiari kerana harga jualan adalah tidak berpatutan memandangkan laporan-laporan yang dikemukakan dan yang didasarkan oleh defendan-defendan. Peguamcara perayu mengkritik pendekatan yang arif hakim dan mengatakan bahawa yang arif hakim tidak mempedulikan fakta-fakta istimewa dan yang tertentu kes ini. Memandangkan tarikh plaintif mengeluarkan saman persetujuan pada 20 Jun 1996, harta pusaka si mati tidak ditadbirkan selama 45 tahun. Pada perbicaraan di hadapan hakim, beberapa defendan-defendan mengemukakan laporan penilaian yang menunjukkan tanah tersebut bernilai RM1.9 juta; walau bagaimanapun tiada keterangan mengenai pembeli dikemukakan semasa perbicaraan tersebut ataupun sebelum itu.

**Diputuskan**, membenarkan rayuan:

(1) Walaupun yang arif hakim ada menyebut di dalam penghakimannya mengenai pernyataan yang dibuat oleh peguamcara defendan-defendan bahawa defendan kelima belas bersetuju membeli hartanah tersebut pada harga RM1.3 juta, namun sangat ketara yang tiada keterangan dikemukakan untuk menunjuk kemampuan beliau untuk mengemukakan harga belian tersebut. Sebaliknya, di hadapan yang arif hakim terdapat seorang pembeli yang bersedia, sanggup dan mampu untuk menyempurnakan pembelian pada harga RM1 juta tanpa milikan kosong. Jika penjualan ini tidak dijayakan, tidak tahu berapa tahun lagi harta pusaka ini tidak digulungkan. Terdapat merit di dalam aduan peguamcara yang arif yang bahawa yang arif hakim gagal mengambilkira pertimbangan-pertimbangan yang relevan apabila mengguna pakai budi bicaranya terhadap plaintif (lihat perenggan 3).

(2) Walaupun mahkamah mungkin memberi perhatian kepada kepentingan benefisiari-benefisiari, tiada keperluan undang-undang di mana sesuatu penjualan hartanah pusaka si mati mesti mendapat persetujuan dari kesemua ataupun majoriti dari benefisiari-benefisiari (lihat perenggan 9); *Che Ah and Che Yang Kelsom v Che Ahmad* [1941] MLJ 126 dan *Yap Yoke Luan v Ong Wee Tok* [1984] 1 MLJ 23 dibeza.]

**Notes**

For cases on administration of sale of land, see 11 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2022–2048.

**Cases referred to**

*Che Ah and Che Yang Kelsom v Che Ahmad* [1941] MLJ 126 (distd)
*Yap Yoke Luan v Ong Wee Tok* [1984] 1 MLJ 23 (distd)

*Tun Salleh Abas (Lee Choon Hei with him) (KM Ong Lee & Co) for the appellant.*
*Tan Kok Kwong (Tan Kok Kwang & Co) for the sixth, ninth, 10th, 12th and 13th respondents.*
*Mathews George (Muthu & Co) for the second, third, fourth, 14th, 15th, 16th, 17th, 23th, 24th and 25th respondents.*

**Gopal Sri Ram JCA (delivering judgment of the court):**

**[1]** The plaintiff as administrator *de bonis non* of the estate of Phua Si Toh ('the deceased') entered into a conditional agreement to sell a piece of land forming part of the deceased's estate. The purchase price was RM1 million. It was a condition of the sale that he should obtain consent of the High Court to effect the sale. The plaintiff applied to the High Court for consent. His application was opposed by the defendants, all beneficiaries of the deceased's estate. The judge who heard the matter dismissed it on the ground that the sale was not in the interest of the beneficiaries as the purchase price was not reasonable in view of the valuation reports produced and relied upon by the defendants.

**[2]** Learned counsel for the appellant criticised the approach of the learned judge as being indifferent to the special and particular facts of this case. Those facts are as follows. The deceased died intestate on 25 June 1951 following which letters of administration were issued to one Phua Kim Toh ('the first administrator'). The first administrator died on 10 October 1958 without winding up the deceased's estate. Letters of administration were then issued to one Tan Hwai Ghee ('the second administrator'). The second administrator died on 24 October 1986 also without winding up the affairs of the deceased's estate. It was only on 16 April 1990 that letters of administration *de bonis non* were issued to the instant plaintiff. At the date of the deceased's death, he left behind five sole beneficiaries one of whom was the first administrator. All these five who were deceased's children are dead and they have left behind their issue who are the present beneficiaries. And they number 25. So, it comes to this. As at the date on which the plaintiff took out his summons for consent, that is to say, 20 June 1996, the deceased's estate had remained without being administered for about 45 years.

**[3]** Although at the hearing before the judge the 6th, 9th, 10th 12th and 13th defendants produced a valuation report showing the land to be RM1.9 million, there was no evidence of a genuine buyer produced at the hearing of the summons or any earlier. There is, mention made by the learned judge in his judgment of a statement by counsel for the remaining defendants that the 15th defendant was agreeable to purchase the subject land for RM1.3 million. But it is significant that no evidence of means was put in to show a real ability on his part to produce the purchase price. Against all this, the judge had before him a purchaser who was ready, willing and able to complete the purchase at RM1 million *without* vacant possession. If the sale is not put through there is no saying how many more years this estate will remain without

being wound up. There is therefore merit in the complaint of learned counsel that the learned judge failed to take into account relevant considerations when exercising his discretion against the plaintiff.

**[4]** We now turn to the authorities. In coming to his decision, the learned judge relied on the judgment of the Supreme Court in *Yap Yoke Luan v Ong Wee Tok* [1984] 1 MLJ 23. The facts of that case were these. The administrators of the estate of a deceased had agreed to sell land belonging to the estate to the appellants. The sale was subject to obtaining leave of the court. The administrators delayed in applying for leave, but in the meantime the appellants were allowed vacant possession of the land. The appellants subsequently obtained an order from the High Court ordering the administrators to apply to the court for leave to sell and transfer the land. The administrators filed an application to court for leave. The beneficiaries were cited as respondents and the appellants applied to be added as interveners. The application was dismissed by the learned judge as the beneficiaries opposed the application on the grounds inter alia that the agreed purchase price was grossly below the market value. The appellants appealed. The Federal Court dismissed the appeal. It was in the context of those facts that Syed Agil Barakhbah FJ said (at p 25):

> In this regard we are of the view that the appellants as the proposed purchasers under a conditional contract were perfectly well aware that their contract had to be approved by the court before it could be carried into effect and they had taken the risk of losing their bargain if the court refused to grant such approval. The duty of the court is to protect the rights of the beneficiaries and not to consider the interests of the proposed purchasers. In exercising its discretion the court will have to look into the facts and surrounding circumstances of the case i.e. whether the proposed sale was favourable to the beneficiaries and whether the administrators had acted with proper prudence in exercising their overriding duty to obtain the best possible price. The court is concerned that the price is a reasonable one not at the time the offer was made but at the time of hearing the application for approval of the proposed sale. (*Che Ah and Che Yang Kelsom v Che Ahmad* [1941] MLJ 126 and *Buttle v Saunders* [1950] 2 All ER 193, 195 and *Tunku Ismail bin Tunku Mohamed Jewa and Anor v Tunku Baharom bin Tunku Mohamed Jewa & Ors* [1982] 2 MLJ 44, 45).
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> We agree with respect with the learned judge that the purchase consideration of $150,000.00 was manifestly low in the light of the valuation of the market value of $244,000 for the said land at the material time. It was apparent that the administrators had failed to carry out their duty as trustees to obtain the best possible price.

**[5]** It is apparent from a reading of the judgment that there is a distinguishing feature in that case. The Federal Court was asked to balance the interests of the appellant purchaser against those of the beneficiaries in a run off the mill case of a sale by administrators. It was not a case, as is apparent from the facts, of the winding up of the affairs of an estate that had remained without being administered for almost half a Century.

**[6]** Next we turn to *Che Ah and Che Yang Kelsom v Che Ahmad* [1941] MLJ 126 which was cited by the Federal Court in *Yap Yoke Luan v Ong Wee Tok*. In *Che Ah*'s case, the administrator of a deceased's estate had entered into an oral contract to sell land belonging to the estate for $12,777.50. The agreement was subject to receiving the court's approval. The administrator's application for leave to sell was rejected

because the solicitor for two of the beneficiaries had received an offer of $14,000 from someone else. There are two passages in the judgment of Terrell JA that must be looked at. In the first he says this:

> I cannot accede to the argument put forward by Mr Rix on behalf of the respondent, the administrator, that the court must consider the interests of the proposed purchaser under the conditional contract.

[7] And this is what he says in the second:

> On the appeal Mr Seenivasagam for the appellants asked that the sale should be by public auction at a reserve of $14,000, and he undertook on behalf of another client to make a bid of, at all events, $14,000 when the auction took place. In these circumstances I feel no doubt that it is the duty of the court to make the order for which the applicants have asked. The appeal therefore should be allowed and the order of the court below set aside. As, however, the administrator has not acted unreasonably in supporting a contract which he made good in faith with the prospective purchaser, the costs of both parties should be taxed as between solicitor and client and paid out of the estate.

**[8]** You can see at once that this case is distinguishable from the present instance. In the first place, the court there was being asked to balance the purchaser's interest against the interests of the beneficiaries. That is not the case before us. Here the court is asked to consider other relevant circumstances, including the winding up of an old estate. In the second place, there counsel for the beneficiaries asked the land to be put up for sale by public auction with a reserve price. That is not the case here. All that the beneficiaries want is to stop the sale. They made no suggestion of the sort made in *Che Ah*'s case.

**[9]** There is one further point that we think ought to be made clear in view of the way in which the case was argued here and in the court below. Whilst the court may have regard to the interests of the beneficiaries there is no requirement in law that a sale of the property of a deceased's estate must have the consent of all or even a majority of the beneficiaries. In *Chee Hock Lai v Tan Swee Thai* [1990] 3 MLJ 477, Abdul Malek Ahmad J (now President of this court) said:

> Based on the said authorities, I had referred to ss 60 and 71 of the Probate and Administration Act 1959 where the provisions clearly state that where an administrator of an estate takes action without getting the approval of the court, the said action or any agreement made does not become null and void on the application of any party who has an interest in the matter. In this case, no one has taken any steps to vitiate the said agreement and moreover following the case of *Itam bte Saad v Chik bte Abdullah* [1974] 2 MLJ 53 which was upheld by the Federal Court in *Chik bte Abdullah v Itam bte Saad* [1974] 1 MLJ 221, the consent of the beneficiaries is not necessary to make the said agreement.

**[10]** As this is a case in which the learned judge failed to take into account relevant considerations, it is appropriate for us to intervene in accordance with well settled principles. We accordingly allowed the appeal, set aside the order of the High Court and granted an order in terms of the plaintiff's summons dated 20 June 1996. We also ordered that costs of all parties both in this court and below be taxed and

paid out of the estate. Because of the special circumstances here, we directed the allocatur not to be drawn until after the completion of the sale. This was to ensure that estate would be in funds. The deposit of RM500 was ordered to be paid out to the appellant.

**[11]** My learned brothers, Ahmad Fairuz (now Chief Justice) and Mokhtar Sidin JJCA have seen this judgment in draft and have expressed their agreement with it.

*Appeal allowed.*

Reported by Loo Lai Mee